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AUDITOR GENERAL

STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

WILLIAM THOMSON
DEPUTY AUDITOR GENERAL

January 30, 2008

The Honorable John Nelson, Chair
Joint Legislative Audit Committee

The Honorable Robert Blendu, Vice Chair
Joint Legislative Audit Committee

Dear Representative Nelson and Senator Blendu:

Our Office has recently completed a 6-month followup of the Arizona Board of Fingerprinting regarding the implementation status of the 12 audit recommendations (including sub-parts of the recommendations) presented in the performance audit report released in March 2007 (Auditor General Report No. 07-01). As the attached grid indicates:

- 5 have been implemented;
- 3 are in the process of being implemented; and
- 4 recommendations are no longer applicable;

Our Office will continue to follow up at 6-month intervals with the Department on the status of those recommendations that have not yet been fully implemented.

Sincerely,

Melanie M. Chesney, Director
Performance Audit Division

MMC:Acm
Attachment

cc: Dennis Seavers, Executive Director
Arizona Board of Fingerprinting

ARIZONA BOARD OF FINGERPRINTING

PERFORMANCE AUDIT AND SUNSET REVIEW

6-Month Follow-Up Report To Auditor General Report No. 07-01

FINDING 1: Board should improve good cause exception decision timeliness

Recommendation	Status of Implementing Recommendation	Additional Explanation
1. The Board should continue to monitor the timeliness of its decisions. If timeliness continues to be a problem, then the Board should consider:	Implemented at 6 Months	
a. Amending the OAH agreement so OAH provides recommendations rather than decisions to the Board; and	No Longer Applicable	The Board did not renew its contract with the Office of Administrative Hearings for fiscal year 2008. Instead the Board hired an additional hearing officer (for a total of 2) to handle all hearings internally.
b. Increasing the use of OAH to maintain timeliness throughout the decision process.	No Longer Applicable	The Board did not renew its contract with the Office of Administrative Hearings for fiscal year 2008. Instead the Board hired an additional hearing officer (for a total of 2) to handle all hearings internally.

ARIZONA BOARD OF FINGERPRINTING

PERFORMANCE AUDIT AND SUNSET REVIEW

6-Month Follow-Up Report To Auditor General Report No. 07-01

FINDING 1: Board should improve good cause exception decision timeliness (concl'd)

Recommendation	Status of Implementing Recommendation	Additional Explanation
2. The Board should ensure its database includes additional fields needed to monitor timeliness. For example, the Board plans to add a field or fields to capture the length of time between the hearing and the recommendation going to the Board.	Implementation in Process	Implementation of this recommendation was delayed as the Executive Director was waiting for a court decision on a lawsuit (filed by an applicant whose request for a good cause exception had been denied) before finishing the planned updates to the Board's database. The Board indicated that the database will be updated to include some of the fields referred to in the audit report. The Board anticipates this update to be done by the 12-month follow-up report.
3. The Board should expand its oversight of program operations by requiring that its staff provide it with regular reports that show how long beyond 60 days cases have been waiting for a decision.	Implemented at 6 Months	
4. The Legislature should consider amending A.R.S. §41-619.55 to establish time frames for holding a hearing from the date of expedited review and the time to make a final decision after the hearing. If the Legislature decides not to do so, the Board should establish its own time frames in policy.	Implemented at 6 Months	

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FINDING 2: Board needs to improve management and oversight of decisions

Recommendation	Status of Implementing Recommendation	Additional Explanation
<p>1. The Board should implement management controls to prevent fingerprint clearance cards from being issued without its final review. These could encompass procedures such as:</p> <ul style="list-style-type: none"> a. Producing regular reports on case status and using the reports to review case status and provide direction to staff; and b. Conducting regular reconciliations with DPS to verify that applicants have been appropriately approved or denied a fingerprint clearance card. 	<p>No Longer Applicable</p>	<p>This recommendation intended to address the Board's inability to track the length of time between the filing of the hearing officer's recommendation and the Board's decision. After the issuance of the audit report, the Board was involved in a lawsuit filed by an applicant whose request for a good cause exception had been denied. In June 2007, the Maricopa County Superior Court ruled that the hearing officer rather than the Board makes the final decision on cases where the Board referred the applicant to an administrative hearing. Previously, the hearing officer would only offer a recommendation to the Board, which would adopt, reject, or modify the hearing officer's proposed findings of fact, conclusions of law, and decision. The Board plans to seek legislative changes to address its hearing process during the 2009 legislative session. Board members are concerned that the Board has no control currently over decisions the agency makes once a case is referred to a hearing officer. Board members believe that a five-member entity is more likely to make consistent decisions than a single decision maker.</p>
<p>2. The Board should continue to keep records of the meetings in which it determines good cause exceptions.</p>	<p>Implemented at 6 Months</p>	

ARIZONA BOARD OF FINGERPRINTING

PERFORMANCE AUDIT AND SUNSET REVIEW

6-Month Follow-Up Report To Auditor General Report No. 07-01

FINDING 3: Board needs to ensure decisions comply with statute

Recommendation	Status of Implementing Recommendation	Additional Explanation
1. The Board needs to ensure that it follows statute when granting or denying good cause exceptions.	No Longer Applicable	The Board disagreed with the audit report's finding that it did not comply with statute in two hearing cases, although it agreed to implement the recommendation. In these two cases the hearing officer had made recommendations for approval of a fingerprint clearance card and the Board overturned these recommendations and denied issuance of the cards, although the hearing officer had determined that the applicants had no convictions for the precluding offenses and were not awaiting trial. The June 2007 Maricopa County Superior Court decision ruled that the hearing officer makes the final decision for all cases referred for an administrative hearing. Therefore, the Board no longer makes decisions in these cases.
2. The Board should modify its application form regarding CPS contact and professional licensure suspension or revocation to:		

ARIZONA BOARD OF FINGERPRINTING

PERFORMANCE AUDIT AND SUNSET REVIEW

6-Month Follow-Up Report To Auditor General Report No. 07-01

FINDING 3: Board needs to ensure decisions comply with statute (concl'd)

Recommendation	Status of Implementing Recommendation	Additional Explanation
a. Ask for this information only from applicants who have been convicted of a precluding offense;	Implementation in Process	The Board did not agree to implement this recommendation. However, in April 2007, the Board requested a formal opinion from the Attorney General (AG). The Board reported that it intends to align its procedures with the AG opinion. The Board has not yet received the AG's decision. In addition, the Board plans to consider asking the Legislature to consider statutory changes to clarify the Board's authority to request information from applicants regarding whether they have had contact with CPS.
b. Ask for this information only when it relates to the type of offense the applicant was convicted of; and	Implementation in Process	The Board did not agree to implement this recommendation. However, in April 2007, the Board requested a formal opinion from the Attorney General (AG). The Board reported that it intends to align its procedures with the AG opinion. The Board has not yet received the AG's decision. In addition, the Board plans to consider asking the Legislature to make statutory changes to clarify the Board's authority to request information from applicants regarding whether they have had contact with CPS.
c. Ask about substantiated CPS reports, not all CPS contact.	Implemented at 6 Months	